

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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OSCAR PEREZ-GARCIA,

Petitioner,

v.

Case No. 09-10839

MARY BERGHUIS,

Respondent.

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**OPINION AND ORDER DECLINING TO ISSUE A CERTIFICATE OF  
APPEALABILITY AND GRANTING PETITIONER'S APPLICATION TO PROCEED  
WITHOUT  
PAYMENT OF FEES ON APPEAL**

On September 30, 2010, the court issued a final judgment in favor of Respondent Mary Berghuis. On October 28, 2010, Petitioner Oscar Perez-Garcia filed a notice of appeal, an application to proceed in forma pauperis, and a motion for a certificate of appealability. For the reasons below, the court will deny a certificate of appealability and grant the application to proceed in forma pauperis on appeal.

A petitioner must receive a certificate of appealability in order to appeal the denial of a habeas petition for relief from either a state or federal conviction. 28 U.S.C. §§ 2253(c)(1)(A), (B). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). A petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citation omitted). In this case,

the court concludes that reasonable jurists would not debate the court's conclusion that the petition does not present any claims sufficient to grant the petition for habeas corpus. In its opinion and order of September 30, 2010, the court relied upon the findings of fact of the State court in determining Petitioner's constitutional rights had not been violated. Giving due deference to the State court on issues of fact, no reasonable jurist could have granted the petition. Furthermore, the court proceeded to consider whether any alleged violations would have supported granting the petition. The court determined that under applicable law, any error in admitting Petitioner's confession would have been harmless error because nearly all the information in the confession was before the jury through admissible evidence. Therefore, the court will decline to issue a certificate of appealability.

The standard for granting an application for leave to proceed in forma pauperis is a lower standard than the standard for certificates of appealability. See *Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002). Whereas a certificate of appealability may only be granted if petitioner makes a substantial showing of the denial of a constitutional right, a court may grant leave to proceed in forma pauperis if it finds that an appeal is being taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a); *Foster*, 208 F. Supp. 2d at 764-65. "Good faith" requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. *Foster*, 208 F. Supp. 2d at 765. Although the court declined to issue a certificate of appealability, the court finds that Petitioner's claims are not frivolous. The court will therefore grant Petitioner's application to proceed on appeal in forma pauperis. Accordingly,

For the reasons stated above, IT IS ORDERED that Petitioner's "Motion for Certificate of Appealability" [Dkt. # 10] is DENIED.

IT IS FURTHER ORDERED that Petitioner's "Application to Proceed In Forma Pauperis on Appeal" [Dkt. # 9] is GRANTED.

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: November 15, 2010

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 15, 2010, by electronic and/or ordinary mail.

s/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522